

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JORGE GUERRERO,
Petitioner.

No. 2 CA-CR 2015-0105-PR
Filed April 22, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Mohave County

No. CR2008927

The Honorable Rick A. Williams, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

The Brewer Law Office, Show Low
By Benjamin M. Brewer
Counsel for Petitioner

STATE v. GUERRERO
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Jorge Guerrero seeks review of the trial court’s order summarily denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Guerrero has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Guerrero was convicted of first-degree murder and weapons misconduct. The trial court sentenced him to a natural life sentence for murder and a consecutive fourteen-year prison term for weapons misconduct. On appeal, we affirmed his convictions and sentences as modified, determining that his prison terms should be served concurrently. *State v. Guerrero*, No. 1 CA-CR 10-0649 (memorandum decision filed Nov. 3, 2011). Guerrero sought post-conviction relief, raising claims of newly discovered evidence and ineffective assistance of trial counsel. The court summarily dismissed the proceeding. This petition for review followed.

¶3 On review, Guerrero first asserts the trial court erred in summarily dismissing his claims and he was entitled to an evidentiary hearing to resolve disputed questions of fact. A defendant is entitled to an evidentiary hearing only if his or her claim is colorable, that is, when the “allegations, if true, would have changed the verdict” or sentence. *State v. Krum*, 183 Ariz. 288, 292, 903 P.2d 596, 600 (1995). But Guerrero does not identify any disputed facts in his petition for review. He instead invites us “to review the original petition for post conviction relief as it pertains to the issues of fact and law that were presented and the prejudice

STATE v. GUERRERO
Decision of the Court

demonstrated as that analysis is contained therein.” We decline to do so; incorporation by reference is not permitted by our rules. *See State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991).

¶4 Guerrero next asserts the trial court erred because it “fail[ed] to make specific findings of fact and conclusions of law” for each issue Guerrero raised in his petition below. In support of this argument, however, Guerrero fails to cite any relevant authority, instead citing several civil cases. And he ignores Rule 32.6(c), which unambiguously permits a trial court to summarily dismiss a petition if “no . . . claim presents a material issue of fact or law which would entitle the defendant to relief under this rule and that no purpose would be served by any further proceedings.” To the extent Guerrero suggests the court erred by implicitly making factual findings in rejecting his claims, he does not develop this argument in any meaningful way, and we do not address it further. *Cf. State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (“Failure to argue a claim on appeal constitutes waiver of that claim.”).

¶5 Although we grant review, we deny relief.